

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of Petition for Reinstatement
of:

OAH No. 2012080816

JAMES ANDREW FOSSETT,

Petitioner.

DECISION

This matter was heard by a quorum of the Board of Vocational Nursing and Psychiatric Technicians (Board) on September 5, 2012, in Los Angeles, California. Administrative Law Judge Amy C. Yerkey, State of California, Office of Administrative Hearings, presided.

James Andrew Fossett (Petitioner) represented himself.

Cristina Felix, Deputy Attorney General, appeared for the Attorney General pursuant to Government Code section 11522.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Petitioner filed the Petition for Reinstatement on June 15, 2012.
2. On February 15, 1989, the Board issued Vocational Nurse License No. 143354 to Petitioner.
3. The Board revoked Petitioner's license, effective October 21, 2007. The revocation was based on Petitioner's unprofessional conduct, in that he possessed and self-administered a controlled substance, failed to abstain from chemical and substance abuse, failed

to adhere to the standards of the profession, and failed to update his address of record with the Board.

4. In brief, Petitioner was convicted of possessing hypodermic syringes and a bag of methamphetamine in 2003. About 10 years earlier, in 1992, Petitioner was convicted of driving with a suspended license. In 1990, he admitted to officers that he injected methamphetamine and smoked marijuana in his vehicle, and his blood sample tested positive for methamphetamine. More recently, Petitioner's drivers' license was revoked due to a moving violation and fare evasion.

5. Petitioner presented substantial evidence of rehabilitation. He acknowledged his addiction and apologized for his misconduct. He has been clean and sober for 21 months. Petitioner completed several recovery programs to help him attain and maintain sobriety. He currently resides at the Tarzana Treatment Center's Transitional Housing Program, which he entered voluntarily. There, he participates in an outpatient alcohol and substance abuse recovery program which requires him to attend several 90-minute outpatient groups per week and a minimum of five 12-step meetings per week. Petitioner is also required to submit to random urinalysis and breathalyzer testing. All of his test results have been negative, and he has been meeting all of the program requirements. Petitioner remains involved in church activities and regularly attends meetings of Alcoholics Anonymous. He has a strong support group at church and at the meetings, including a sponsor.

6. Petitioner is currently taking 30 hours of continuing education in home health nursing. He has also read current articles regarding nursing and cardiac pulmonary resuscitation. Petitioner included several letters in support of his petition: one from his AA sponsor, multiple letters from providers at the Tarzana Treatment Center, and from his priest at St. Thomas the Apostle in Hollywood.

LEGAL CONCLUSIONS

Cause exists pursuant to Business and Professions Code Section 2878.7, to grant the Petition for Reinstatement submitted by Petitioner, by reason of factual findings numbers 5 and 6. However, in light of the admitted violation and in order to ensure protection of the public, the Board will issue a probationary license with appropriate conditions.

ORDER

The Petition for Reinstatement submitted by James Andrew Fossett is granted and a license shall be issued to Petitioner. However, the license issued pursuant to this order shall immediately be revoked, which order of revocation shall be stayed and Petitioner's license placed on probation for three years on the following conditions:

1. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by Respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of himself/herself within thirty (30) days of the effective date of the decision.

If Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Probation Program.

Upon successful completion of probation, Respondent's license will be fully restored.

3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations, and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, Respondent shall provide a list of all states and territories where he/she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which he/she has applied for or holds a vocational/practical nurse, psychiatric technician, and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if he/she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If Respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he/she resides or practices outside of California. Respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon his/her return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his/her employer of the probationary status of Respondent's license. This notification to Respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his/her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if he/she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in his/her licensed capacity in the state of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, Respondent shall obtain approval from the Board of the supervision provided to Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his or her own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify Respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

11. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times, maintain an active current license with the Board including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

12. LICENSE SURRENDER

During probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A licensee who surrenders his/her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or one (1) year for a license surrendered for a mental or physical illness.

13. VIOLATION OF PROBATION

If Respondent violates the conditions of his/her probation, the Board, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of Respondent's license. If during probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

14. CHEMICAL DEPENDENCY SUPPORT & RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by Respondent with each written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

15. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

16. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

17. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and Respondent's current employer.

18. TAKE AND PASS LICENSURE EXAMINATION

Prior to commencing practice, Respondent shall take and pass the licensure exam currently required of new applicants within two (2) years from the effective date of the Board's decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until Respondent has successfully passed the licensure examination and a license is issued by the Board.

Dated: NOV 06 2012

Effective Date: NOV 21 2012



TODD D'BRAUNSTEIN
President
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS